

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEO GUY, RYAN TANNER, MAGALY
GRANADOS, KERRY LAMONS, TAMMY
RANO, VICK WILL, JENNIFER WHITE, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

CONVERGENT OUTSOURCING, INC.

Defendant.

NO. 2:22-cv-01558-MJP

**DECLARATION OF GARY M.
KLINGER IN SUPPORT OF
PLAINTIFF'S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Gary M. Klinger, hereby declare the following is true and accurate and based on my
personal knowledge:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am
competent to so testify.

2. I am currently a partner of the law firm Milberg Coleman Bryson Phillips
Grossman, PLLC ("Milberg"). I am counsel at Milberg for the proposed Settlement Class. I
submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of
Class Action Settlement ("Motion for Preliminary Approval"). Except as otherwise noted, I

1 have personal knowledge of the facts set forth in this declaration and could testify competently
2 to them if called upon to do so.

3 Counsel Qualifications

4 3. I have extensive experience prosecuting complex class actions, especially in
5 data breach litigation. I have been licensed to practice law in the State of Illinois since 2010,
6 am a member of the bars of numerous federal district and appellate courts,

7
8 4. I have extensive experience in class action litigation generally and data breach
9 class actions in particular. My experience, and that of my law partners, is described below.

10 5. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel
11 on hundreds of complicated and complex class actions.

12 6. These cases recently include cutting-edge litigation, including: *In re Dealer*
13 *Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill. 2018) (appointed
14 co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea & Tick*
15 *Collar Marketing, Sales Practices, & Products Liability Litigation*, Case No. 1:21-cv-04447
16 (N.D. Ill. 2021) (appointed co-lead counsel; case on-going); and *Carder v. Graco Children's*
17 *Products, Inc.*, Case No. 2:20-cv-00137 (N.D. Ga. 2020) (appointed interim co-lead counsel;
18 case on-going)
19

20 7. With respect to privacy cases, Milberg is presently litigating more than fifty (50)
21 cases across the country involving violations of the Telephone Consumer Protection Act, 47
22 U.S.C. § 227 et seq., privacy violations, data breaches, and ransomware attacks. Milberg
23 Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and
24 privacy litigations, including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation*,
25
26

MDL 2972, Case No. 3:20-mn-02972 (D.S.C. 2020) (appointed co-lead counsel; case on-going).

8. Milberg Attorneys have also participated in other data breach and privacy litigation, recently, which includes: *Veiga v. Respondus, Inc.*, Case No., 1:21-cv-02620 (N.D. Ill. 2021); *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga. 2021); *In re Wawa, Inc. Data Security Litig.*, Case No. 2:19-cv-06019 (E.D. Pa. 2019); *Whalen v. Facebook, Inc.*, Case No. 4:20-cv-06361 (N.D. Cal. 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247 (7th Cir. 2021).

9. Milberg Attorneys have also served as Lead Counsel, Co-Counsel, or Class Counsel on dozens of class actions ranging from defective construction materials, *e.g.*, defective radiant heating systems, siding, shingles, and windows, to misrepresented and recalled products, *e.g.*, dog food, prenatal vitamins, to environmental incidents, such as the Exxon Valdez, BP Oil Spill.

10. It is noteworthy that, just in the time since 2020 through the present, I (either individually, or as a member of the law firms in which I have been a partner during that timeframe) have been appointed class counsel in a number of data breach and/or data privacy cases, including, but not limited to, the following:

- a. *Kenney et al. v. Centerstone of America, Inc.*, No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted Aug. 2021);
- b. *Baksh v. Ivy Rehab Network, Inc.*, No. 7:20-cv-01845-CS (S.D.N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- c. *Mowery v. Saint Francis Healthcare System*, No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted

Dec. 2020);

- d. *Chatelain v. C, L & W PLLC d/b/a Affordacare Urgent Care Clinics*, No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Jackson-Battle v. Navient Health, Inc.*, No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);
- f. *Bailey v. Grays Harbor County Public Hospital District*, No. 20-2- 00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);
- g. *Richardson v. Overlake Hospital Medical Center*, No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case, final approval granted September 2021);
- h. *Klemm v. Maryland Health Enterprises Inc.*, No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);
- i. *In re GE/CBPS Data Breach Litig.*, No. 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);
- j. *Nelson v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million);
- k. *In re Canon U.S.A. Data Breach Litig.*, Master File No. 1:20-cv-06239- AMD-SJB (E.D.N.Y.) (appointed co-lead counsel);
- l. *Suren v. DSV Solutions, LLC*, No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted Sept. 27, 2021);

- 1 m. *Chacon v. Nebraska Medicine*, No. 8:21-cv-00070-RFR-CRZ (D.
2 Neb.) (appointed class counsel in data breach settlement, final
approval granted Sept. 2021);
- 3 n. *Aguallo v. Kemper Corp.*, No. 1:21-cv-01883 (N.D. Ill.) (appointed
4 Co-lead Counsel, final approval granted of \$17.1 million class
5 settlement);
- 6 o. *In re Herff Jones Data Breach Litig.*, Master File No. 1:21-cv-1329-
7 TWP- DLP (S.D. Ind.) (appointed co-lead counsel in data breach
involving over 1 million persons; preliminary approval of \$4.35
8 million settlement granted Jan. 2022);
- 9 p. *In re CaptureRx Data Breach Litig.*, No. 5:21-cv-00523-OLG (W.D.
10 Tex.) (appointed co- lead counsel in data breach case involving over
2.4 million class members; preliminary approval of \$4.75 million
11 settlement granted Feb. 2022);
- 12 q. *In re Arthur J. Gallagher Data Breach Litig.*, No. 1:21-cv-04056
13 (N.D. Ill.) (appointed co- lead counsel in data breach case involving
over 3 million class members);
- 14 r. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D.
15 Tex.) (\$11 million settlement for a major data breach involving more
than 4 million consumers);
- 16 s. *Hough v. Navistar, Inc.*, No.: 2021L001161 (Ill. 18th Jud. Cir. Ct.,
17 DuPage Cnty.) (appointed co-lead class counsel; final approval
18 granted May 2022);
- 19 t. *Clark v. Mercy Hospital*, No. CVCV082275 (Iowa Dist. Ct, Johnson
20 Cnty.) (appointed class counsel; final approval granted July 2022);
- 21 u. *Myschka v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist.
22 Ct., Marshall Cnty.) (appointed class counsel; final approval granted
June 2022);
- 23 v. *Devine v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas,
24 Cuyahoga Cnty.) (appointed class counsel; final approval granted
25 September 2022);
- 26

- 1 w. *Davidson v. Healthgrades Operating Company, Inc.*, No. 1:21-cv-
2 01250- RBJ (D. Colo.), (appointed class counsel; final approval
3 granted August 2022);
- 4 x. *Bodie v. Capitol Wholesale Meats, Inc.*, No. 2022CH000020 (Ill.
5 18th Jud. Cir. Ct., DuPage Cnty.) (appointed class counsel; final
6 approval granted March 2022);
- 7 y. *Culp v. Bella Elevator LLC*, No. 2021-CH-00014 (Ill. 10th Jud. Cir.
8 Ct., Peoria Cnty.) (appointed class counsel; final approval granted
9 May 2022);
- 10 z. *Cain v. OSF Healthcare*, No. 21-L-00231 (Circuit Court for the
11 Tenth Judicial Circuit of Peoria County, Illinois) (appointed
12 settlement class counsel; final approval granted January 2023);
- 13 aa. *Nelson v. Bansley & Kiener*, No. 2021-CH-06274 (Ill. Cir. Ct., Cook
14 Cnt'y) (appointed class counsel; final approval granted November
15 2022);
- 16 bb. *Steen v. The New London Hospital Association, Inc.*, No. 217-2021-
17 CV-00281 (Merrimack Superior Court, New Hampshire) (appointed
18 class counsel; final approval granted January 2023);
- 19 cc. *Summers II v. Sea Mar Community Health Ctrs.*, No. 22-2-00773-7
20 SEA (Wash. Sup. Ct., King Co.) (appointed class counsel; final
21 approval granted December 2022);
- 22 dd. *In re Forefront Data Breach Litig.*, Master File No. 1:21-cv-00887-
23 LA (E.D. Wisc.) (appointed settlement class counsel; final approval
24 granted March 2023);
- 25 ee. *Engle v. Talbert House*, No. A2103650 (Court of Common Pleas,
26 Hamilton County, Ohio) (appointed class counsel; final approval
granted February 2023);
- ff. *Henderson v. San Juan Regional Medical Center*, No. D-1116-CV-
2021-01043 (11th Jud. Dist. Ct., County of San Juan, NM)
(appointed class counsel; final approval granted March 2023);
- hh. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, No. 2173 CV 00498
(Mass. Sup. Ct. Dept.) (appointed class counsel; final approval
granted February 2023);

- 1 ii. *Hawkins v. Startek, Inc.*, No. 1:22-cv-00258-RMR-NRN (D. Colo.)
2 (appointed class counsel; final approval granted April, 2023);
- 3 jj. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287
4 (M.D. Tenn.) (appointed settlement class counsel; final approval
5 granted April 2023);
- 6 kk. *Beasley v. TTEC Services Corp.*, No. 22-cv-00097-PAB-STV
7 (USDC CO) (appointed class counsel; preliminary approval granted
8 May 2023);
- 9 ll. *Boyd v. Public Employees Credit Union*, No. 1:22-cv-00825-LY
10 (W.D. Tex.) (appointed class counsel; final approval granted
11 June 2023);
- 12 mm. *Charlie v. Rehoboth McKinley Christian Healthcare Services*,
13 No. 21-652 SCY/KK (USDC NM)(appointed class counsel; final
14 approval granted July 2023);
- 15 nn. *Sharma et al. v. Accutech Systems Corporation*, Case No. 18C02-
16 2210-CT-000135 (Delaware Circuit Court 2, Delaware County,
17 Indiana) (appointed Class Counsel; preliminary approval granted
18 January 2023);
- 19 oo. *Simmons v. Assistcare Home Health Services, LLC*, No.
20 511490/2021 (Supreme Court of the State of New York, County of
21 Kings) (appointed settlement class counsel; final approval granted
22 August 2023);
- 23 pp. *Bailey v. Alacrity Solutions Group, LLC*, No. 29D03-2204-PL-
24 002383 (Hamilton County (Indiana) Superior Court) (appointed class
25 counsel; final approval granted June 2023);
- 26 qq. *Retsky v. Super Care, Inc d/b/a/ Supercare Health*, No.
 22STCV16267 (Los Angeles County California Superior Court)
 (appointed class counsel; final approval granted August 2023);
- rr. *In re Medical Review Institute of America, LLC, Data Breach*
 Litig., No. 2:22cv0082-DAK-DAO (D. Utah) (appointed co-lead
 class counsel; final approval granted August 2023);

1 ss. *Colon v. Creative Ventures Inc.*, Case Number 2023LA000177
 2 (In the Circuit Court of the Eighteenth Judicial Circuit, Dupage
 3 County, Illinois) (appointed settlement class counsel; final approval
 granted September 2023);

4 tt. *Jones v. Horizon House, Inc.*, No. 01767, Control No. 23030116
 5 (Court of Common Pleas of Philadelphia County, First Judicial
 6 District of Pennsylvania) (appointed class counsel; preliminary
 approval granted April 2023);

7 uu. *Keefe v. Froedtert Health, Inc.*, No. 2023CV001935 (Circuit
 8 Court of Wisc., Milwaukee Cty.) (appointed settlement class counsel;
 final approval granted September 29, 2023).

9 vv. *Reynolds, et al v. Marymount Manhattan College*, Case No. 1:22-cv-06846
 10 (USDC S.D.N.Y) (appointed settlement class counsel; final approval granted
 11 October 20, 2023);

12 ww. *Borre v. O'Hare Towing Systems, Inc.*, Case No. 2020-CH-02865 (Ill. Circ.
 13 Ct., Cook County) (appointed settlement class counsel; final approval
 granted October 25, 2023).

14
 15 11. I have been appointed by state and federal courts to act as Class Counsel for
 16 millions of consumers and recovered hundreds of millions of dollars for consumers throughout
 17 the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action
 18 lawsuits pending in state and federal courts across the country.

19 12. I recently obtained final approval of a class-wide settlement for a major data
 20 breach class action involving more than six million consumers. *See Carrera Aguallo v. Kemper*
 21 *Corp.*, No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (appointed co-lead counsel, obtained
 22 preliminary approval of a \$17.6 million dollar settlement to resolve similar data breach class
 23 action claims against Kemper Corporation in a case involving more than six million class
 24 members).
 25
 26

1 13. I presently serve as one of two Court-appointed Lead Counsel in the data breach
2 case, *In re Canon U.S.A. Data Breach Litigation*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y.
3 filed Dec. 23, 2020).

4 14. I was also appointed Co-Lead Counsel in the data breach case, *In re Herff Jones*
5 *Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involved
6 more than one million class members and was finally approved on a class-wide basis for a
7 \$4.35 million settlement.

8 15. I also served as co-lead counsel in the consolidated data breach litigation styled,
9 *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.), which
10 involved more than 2.4 million class members and was finally approved on a class-wide basis
11 for a \$4.75 million settlement.

12 16. I was also recently appointed co-lead counsel to represent more than three
13 million class members in another major data breach class action in the Seventh Circuit. *See In*
14 *re Arthur J. Gallagher Data Breach Litig.*, No. 1:21-cv-04056 (N.D. Ill.).

15 17. I have successfully litigated privacy class actions through class certification. *In*
16 *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. June 25,
17 2018), where I certified, over objection, a nationwide privacy class action involving more than
18 one million class members.

19 18. In a recent nationwide privacy class settlement hearing in the United States
20 District Court for the Northern District of California, Judge Richard Seeborg personally
21 commended me for having achieved “quite a substantial recovery for class members.” Judge
22 Seeborg further stated he could not recall any class action case where “the amounts going to
23 each class member were as substantial” as that obtained by me (and my co-counsel).
24
25
26

1 19. In addition to concentrating my practice on class action litigation involving
2 consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised
3 of the current law on these issues. In recent years, I have attended various legal training
4 seminars and conferences, such as the dri™ conference for Class Actions, The Consumer
5 Rights Litigation Conference and Class Action Symposium, as well as attended various
6 seminars offered by Strafford on class action issues.

7
8 20. I am also a member of the International Association of Privacy Professionals
9 and a Certified Information Privacy Professional (CIPP/US).

10 21. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A.
11 Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude).
12 While at the U of I College of Law, I was a member of, and ultimately appointed as the
13 Executive Editor for the Illinois Business Law Journal. My published work includes: *The U.S.*
14 *Financial Crisis: Is Legislative Action the Right Approach?*, Ill. Bus. L. J. (Mar. 2, 2009).

15
16 22. I am presently pursuing my Master of Laws (LLM) in Data Privacy and
17 Cybersecurity from the University of Southern California Gould School of Law.

18 23. I became licensed to practice law in the State of Illinois in 2010 and am a
19 member of the Trial Bar for the Northern District of Illinois, as well as the U.S. Bankruptcy
20 Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal
21 courts across the country, including, but not limited to, the U.S. District Courts for the District
22 of Colorado, the Central District of Illinois, the Northern District of Illinois, Northern District
23 of Indiana, Southern District of Indiana, Eastern District of Michigan, and the Eastern District
24 of Texas.
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24. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs’ settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

25. Plaintiffs request that the Court appoint Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Gary E. Mason of Mason, LLP, Jean S. Martin of Morgan & Morgan, and Cecily C. Jordan of Tousley, Brain, Stephens, PLLC as Settlement Class Counsel. The Firm resumes of Settlement Class Counsel are attached to this declaration as **Exhibit A**.

26. In the sections that follow, I will detail the hard-fought negotiations that resulted in the Agreement now before the Court for preliminary approval. As described below, the Settlement provides significant relief to Members of the Settlement Classes, and I and my co-counsel strongly believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned, fair, reasonable, adequate, and in the best interests of the Settlement Class Members and is worthy of preliminary approval. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit B**.

Initial Investigation and Communications

27. After, Plaintiff retained my firm I, my Milberg colleagues, and my co counsel vigorously and aggressively gathered all of the information that was available regarding Defendant and the allegations in this lawsuit.

28. Plaintiffs and Settlement Class Counsel vigorously and aggressively gathered information that was available regarding Convergent and the Data Incident—including

publicly-available documents concerning announcements of the Data Incident and notice of the Data Incident to Plaintiffs and the Settlement Class.

The Class Settlement

History of Negotiations

29. The settlement came about as the result of protracted arm's-length negotiations.

30. Plaintiffs and Settlement Class Counsel believe that the claims asserted in this case have merit. We acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, trial, and potential appeals. I have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation.

31. It is my belief, and the belief of my co- counsel based on our extensive experience generally and investigation and research into this case in particular, that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The collective experience of me and my colleagues with experience on similar types of privacy and data protection practices provided substantive knowledge on the subject to enable us to represent Plaintiffs' and Settlement Class Members' interests without expending hundreds of hours and substantial financial resources to come up to speed on the subject area or engaging in formal discovery.

32. Plaintiffs have been personally involved in the case and support the Settlement. Plaintiffs strongly believe the settlement is favorable to the Settlement Class.

Release

33. The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case.

1 ***Exclusions and Objections***

2 34. Defendant has retained Epiq, a nationally recognized and well-regarded class
3 action settlement administrator to serve as Claims Administrator, subject to the Court's
4 approval.

5 35. The timing of the claims process is structured to ensure that all Class Members
6 have adequate time to review the terms of the Settlement Agreement and decide whether they
7 would like to opt-out or object.
8

9 36. The timing with regard to objections and exclusions is structured to give Class
10 Members sufficient time to review the Settlement documents—including Plaintiff's Motion for
11 Attorneys' Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the
12 deadline for Class Members to object or exclude themselves from the Settlement.

13 37. Any Class Member wishing to opt out of the Settlement Class shall individually
14 sign and timely submit written notice of such intent.
15

16 38. The Opt-Out Members shall not be eligible to receive any Settlement Benefits
17 under, and shall not be bound by the terms of, the Settlement Agreement or the Judgment. The
18 Opt-Out Members shall also waive and forfeit any and all rights they may have to appear
19 separately regarding and/or to object to the Settlement Agreement.

20 ***Service Award, Fees, and Costs***

21 39. The Parties did not discuss the payment of attorneys' fees, costs, expenses
22 and/or service awards to Plaintiffs until after the substantive terms of the settlement had been
23 agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses,
24 and a service award to Plaintiffs as may be agreed to by Defendant and proposed Class Counsel
25 and/or as ordered by the Court.
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